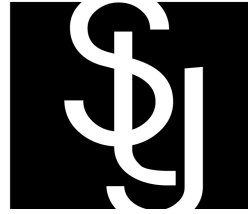


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October 24, 2017

CalRecycle
Cal/EPA Building
Byron Sher, 2nd floor
1001 I Street
Sacramento CA 95814
Attn: Paulina Kolic

Re: SB 270 Draft Regulatory Text; objections

Dear Ms. Kolic:

I hereby object to the Draft Regulatory Text (“DRT”) published by CalRecycle as part of its notice of the October 25, 2017 Informal Rulemaking Workshop on SB 270. This objection is made on my own behalf and in the public interest, and as counsel for the newly-formed Coalition To Enforce SB 270 of which I am the founding member.

FIRST OBJECTION

SB 270 §§ 42281.5 states as follows:

On and after July 1, 2015, a producer of reusable grocery bags made from plastic film shall not sell or distribute a reusable grocery bag in this state unless the producer is certified by a third-party certification entity pursuant to Section 42282. A producer shall provide proof of certification to the department demonstrating that the reusable grocery bags produced by the producer comply with the provisions of this article. ***The proof of certification shall include all of the following:***

- (a) Names, locations, and contact information of all sources of postconsumer recycled material and suppliers of postconsumer recycled material.
- (b) Quantity and dates of postconsumer recycled material purchases by the reusable grocery bag producer.
- (c) How the postconsumer recycled material is obtained.
- (d) Information demonstrating that the postconsumer recycled material is cleaned using appropriate washing equipment.

DRT § 17988.3(c) states as follows:

A proof of certification may include supplemental documents, including, but not limited to:

(2) Documents containing postconsumer recycled content information as required by section 42281.5 of the Public Resources Code.

The proposed use of the word “may” means that submission of the documents listed in § 42281.5 is *optional*. However, SB 270 states that submission of documents or information listed in § 42281.5 is *mandatory*. An administrative regulation cannot waive the requirements of a statute. Therefore, I object to DRT § 17988.3(c) and demand enforcement of the *mandatory* requirements of § 42281.5. It is critically important for potential objectors and the Superior Court to be able to review such documents and information to ensure that producers are complying with the law.

SECOND OBJECTION

DRT § XXXXX states as follows:

The Department shall maintain the confidentiality of information submitted to the Department as required by the California Public Records Act (Chapter 3.5 (commencing with section 6250) of Division 7 of Title 1 of the Government Code), section 40062 of the Public Resources Code, and Title 14, California Code of Regulations, Division 7, Chapter 1, Article 4 (commencing with section 17041).

SB 270 § 42282(f)(1) states as follows:

A person may object to the certification of a reusable grocery bag producer pursuant to this section by filing an action for review of that certification in the superior court of a county that has jurisdiction over the reusable grocery bag producer. The court shall determine if the reusable grocery bag producer is in compliance with the requirements of this article.

On July 26, 2017, CalRecycle’s Chief Counsel wrote to me stating as follows:

Section 42282 requires CalRecycle to “accept” the certifications from producers. It does not give CalRecycle the authority to do more than accept these certifications....

Further, subdivision (f) of section 42282 specifically outlines a procedure for review of producers’ certifications to verify that they

do indeed meet the requirements of SB 270. Pursuant to the process detailed in subdivisions (1) through (4) of section 42282(f), the only way to challenge a reusable bag producer's certification is for a person to bring that challenge directly to the superior court. The superior court will then determine whether the producer's certification meets the requirements of SB 270, and, if the court finds that the certification is deficient, the court must order CalRecycle to remove the producers from the list of certified reusable grocery bag producers.

I object to DRT § XXXXX on the ground that objections, judicial review, and judicial determination under SB 270 § 42282(f) would be *ineffective and impossible* if a producer could withhold from potential objectors some or all of its documents by designating them as confidential, trade secrets, proprietary information, or intellectual property. That would violate the clear legislative intent of SB 270. The legislative intent of SB 270 was to override the statutory provisions cited in DRT § XXXXX. A request for documents under SB 270 to determine whether an objection should be made is *sui generis* and not covered or limited by any other statutory provisions.

CalRecycle may not withhold from production any documents submitted to it by producers, regardless of claims of confidentiality, proprietary information, trade secrets, intellectual property, or other reason. If a producer wishes to distribute or sell reusable plastic bags in California pursuant to SB 270, it must disclose all documents and information that support its claim that it is complying with SB 270 for members of the public to verify that it is honestly and completely fulfilling the legal requirements regarding recycled content. If it is not prepared to make such disclosures, then it must refrain from distributing or selling its bags in California.

RESERVATION OF RIGHTS

All rights are reserved. No waivers or admissions are intended by any statement or omission herein.

Sincerely,

A handwritten signature in black ink, appearing to be "Stephen L. Joseph", with a long horizontal line extending from the top right.

Stephen L. Joseph